IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 747 OF 2006

Petronila Silvery.] .. Petitioner

Versus

1. Allahabad Bank & Anr.] .. Respondents

Mr. S.C. Naidu with Mr. Gada i/b C.R. Naidu & Co. for the petitioner.

None for the respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 7TH APRIL, 2006

P.C. :

. The petitioner, being employed, is presently in Canada. The Petition has been filed through her Constituted Attorney. As the warrant of attachment was issued consequent to an order dated 18th August, 2003, passed by the Presiding Officer, Debt Recovery Tribunal, Mumbai in Original Application No.1486 of 2000, the petitioner preferred Misc. Appeal No.26 of 2000 for raising the attachment. On 28th January, 2005, the Appeal was listed, but was adjourned at the request of the respondent-Bank. On 22nd February, 2005, after

hearing, ad-interim stay of the recovery proceedings against the Bank was granted. The respondent-Bank filed documents on 12th April, 2005 and the hearing was adjourned. On 27th May, 2005, the Advocate for the petitioner was out of town for attending a marriage in his family. An application for adjournment was filed. The matter was attended on that day by one Advocate Mrs. Daksha Raghani alongwith one Trainee Junior. The Presiding Officer was pleased to adjourn the matter, but vacated the stay order granted on 22nd February, 2005. The next date of hearing was recorded by the Trainee Junior as 16th June, 2005. The petitioner's Advocates moved accordingly on 16th June, 2005. The Advocate for the petitioner learnt that the Appeal was dismissed by the Presiding Officer on 14th June, 2005 itself. Therefore, Misc. Application was filed by the petitioner for restoring Misc. Appeal No.76 of 2005. On 27th October, 2005, by the impugned order the said application was also dismissed. Therefore, the present Writ Petition.

2. Heard counsel for the petitioner. None appeared for respondent No.1-Bank, though served. Admittedly, the petitioner was not present on 27th May, 2005 when the matter was adjourned for the next date and on the same day, ad-interim order granted on 22nd

February, 2005, was also vacated. The Trainee Junior, as averred, recorded 16th June, 2005, as the next date of hearing. However, it appears that 14th June, 2005, was the date of next hearing. The Advocate for the applicant was admittedly not present as he was out of town for attending marriage on 27th May, 2005. The matter was heard on 14th June, 2005, in absence of the petitioner as well as his Advocate as the wrong date was noted inadvertently. As per averments on 16th June, 2005, the petitioner's Advocate came to know about the dismissal of the Appeal. The Misc. Application, therefore, was preferred immediately.

3. Considering the fact that the attachment warrant was issued against the petitioner and on 22nd February, 2005, the recovery proceedings against the said flat were stayed, we see no reason for the petitioner or his Advocate not to contest such litigation and to insist for cancellation of warrant of attachment of the flat in question. The matter was adjourned on 27th May, 2005, on a condition of vacation of stay order in such circumstances there was no reason that party could not be said to be diligent and/or intentionally delaying the matter. The petitioner's rights in such matter need to be decided on merit. In the present case, admittedly, petitioner has suffered

the dismissal order of her Appeal because of an inadvertent noting by the Trainee Junior of the petitioner’s Advocate.

4. By the impugned order, respondent No.2, without considering the merit of the matter wrongly dismissed the application for restoration of the Appeal, basically on the ground that the petitioners were not diligent in prosecuting the case and further observing that the Appeal was preferred to cause the delay and, therefore, there was no bonafide grounds raised to consider the same. The reasoning given by the authority, according to us, is not correct. In view of the facts and circumstances of the case we are satisfied that a case has been made out by the petitioner to restore the Appeal No.26 of 2004 and needs to be heard by the authority on merit.

5. In view of the above, the Writ Petition is allowed in terms of prayer clauses (a) and (b). However, the recovery proceeding No.364 of 2005 in respect of the flat in question is stayed for two weeks from today.

6. Parties to appear before the authority within two weeks for fixing the date of hearing. Writ Petition disposed of accordingly. There shall be no order as to costs.

. Parties to act on a copy of the order authenticated by the Associate of this Court.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]